Roadway Express, Inc. *and* Jeff Haas.

Chauffeurs, Teamsters and Helpers Local Union No. 776, a/w International Brotherhood of Teamsters[1] *and* Jeff Haas. Cases 5–CA-32308 and 5–CB–9765

August 31, 2006

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND KIRSANOW

On March 9, 2006, Administrative Law Judge Karl H. Buschmann issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent Union and Respondent Employer filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[2] and to adopt the recommended Order.

[1] We have amended the caption to reflect the dissafiliation of the International Brotherhood of Teamsters from AFL–CIO effective July 25, 2005.

[2] Members Schaumber and Kirsanow agree with the judge's conclusion that the General Counsel failed to establish, by a preponderance of the evidence, that the Union's conduct in bringing suspected DOT driving-log violations by Charging Party Jeff Haas to the Company's attention was motivated by unlawful animus. They observe, however, that there is some evidence of animus in the record. Haas is a "core payer," i.e., a *Beck* objector, and in December 2003, a union steward referred to core payers as "fucking scumbags." Also, the Union persisted in pressing a complaint about Haass December 15, 2004 DOT log entries even after the Company had determined that the complaint lacked merit. On the other hand, the Union has an established history of bringing drivers' logs to the attention of the Company when it believes DOT regulations have been violated; the judge found that the Union's complaints about Haass logs were "at least arguably" valid; Haas conceded in his testimony that other drivers have complained about his logs; and noncore payer drivers have been disciplined for log entries similar to Haas'. In addition, the steward's insulting characterization of core payers was remote in time from the events at issue here, and there is no evidence that the Union has failed to represent fairly four other core payers in the Company's employ. Therefore, although Members Schaumber and Kirsanow believe that there is room for doubt about the relative seriousness of the DOT violations upon which the Union based its complaints against Haas and the Union's motivation toward him, they find that the evidence of unlawful animus is insufficient to sustain the General Counsel's burden of proof.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. August 31, 2006

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Peter N. Kirsanow, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

James C. Panousos, Esq., for the General Counsel.
Ira H. Weinstock, Esq., of Harrisburg, Pennsylvania, for the Respondent Union.
Carl H. Gluek, Esq. (Frantz Ward, LLP), of Cleveland, Ohio, for the Respondent Company.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried in Carlisle, Pennsylvania, on August 29 and 30, 2005. The charges were filed January 12, 2005, as amended, and the consolidated complaint was issued April 26, 2005. The complaint alleges that the Respondent, Roadway Express, Inc. (the Company) violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by discriminating against its employee Jeff Haas for issuing a disciplinary warning and a suspension to encourage membership in a labor organization. The complaint also alleges that the Respondent, Chauffeurs, Teamsters and Helpers Local Union No. 776, a/w International Brotherhood of Teamsters (the Union), violated Section 8(b)(2) and 8(b)(1)(A) of the Act for attempting to cause and causing the Company to discipline Jeff Haas, because of his status as a core financial member and "Beck" objector. The Respondents filed timely answers, admitting the jurisdictional allegations in the complaint, but denying the commission of any unfair labor practices. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Roadway Express, Inc., an Ohio corporation with offices and a place of business in Carlisle, Pennsylvania, has been engaged in the interstate transportation of freight. With gross revenues in excess of $50,000 for the transportation of freight from the State of Pennsylvania directly to points located outside the State, the Respondent is admittedly

an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

The Issues

1. Did the Union violate Section 8(b)(2) and 8(b)(1)(A) of the Act by causing and attempting to cause the Employer to discipline Jeff Haas, because he was a core financial member of the Union?

2. Did the Company violate Section 8(a)(1) and (3) of the Act by discriminating against Jeff Haas and discipline him, at the behest of the Union, because Haas was a core financial union member.

The Facts

The Union and Roadway have been operating pursuant to the National Master Freight Agreement and Central Pennsylvania Supplemental Agreement, effective April 1, 2003 through March 31, 2008 (Jt. Exh. 1). Roadway is also bound by detailed safety regulations as prescribed by the Department of Transportation (DOT) (GC Exh. 30). Jeff Haas, one of approximately 300 road drivers employed by the Company at its facility, has been a member of the Union ever since his employment with Roadway in 1993. In 2003, Haas ran for union office with a slate of other union members, advocating the removal of the incumbent union officers on the grounds that they were wasting expenditures and failing to adequately represent the members. Haas and his group were defeated, and the current officers, including Daniel Virtue, president, Keith LaCroix, business agent, and John Vogel, secretary-treasurer, remained in office. Haas then decided to become a financial core payer and Beck objector. He accordingly notified the Union in writing on December 12, 2004, and again on December 28, 2004, that he wished to become a financial core payer. He also requested an accounting showing the Union's expenditures (GC Exhs. 33, 34). After the Union failed to acknowledge Haas' request, he sent a certified letter, dated December 28, 2004, repeating his request for an accounting of union dues and stating his core payer status. The Union presumably honored the request to consider Haas to be a core member, but it did not supply him with an accounting. According to the testimony of the Union's business agent, Haas was one of four road drivers listed by the Union as core members.

Haas was generally regarded by his employer as a good employee who "runs hard." According to Paul (Greg) Kelly, director of regional operations for Roadway, Haas was regarded as a good worker. By letter of January 6, 2005, Kelly acknowledged Haas' "accomplishments for being one of the top 10 driving performers at the Harrisburg facility in 2004" (GC Exh. 35).

However, in two incidents Roadway disciplined Haas. In the first scenario was a letter, dated November 1, 2004, in which Roadway issued Haas a warning, signed by Lou Franklin, resource administrator. The warning stated: "On 10/28/04 at Carlisle, Pa. you violated our policy (or contract) by your failure to follow instructions. You turned in a log for 10/27/04 that did not conform with the D.O.T. Further violations of this nature will result in disciplinary action" (GC Exh. 18). The warning actually came from Kelly. He authorized it, because at that time he was the Respondent's relay manager. Kelly explained that he was suspicious about the accuracy of Haas' log entries, after the Union brought the issue to his attention. Donald (Don) Lyons, the Union's shop steward, had referred Haas' logs to the Company on prior occasions, because the Union felt that Haas was stretching the DOT regulations in order to increase his driving times.

On this occasion, Kelly informed Haas that the Union was not happy with the way he worked, and added that he should just accept the letter. Kelly promised to bury the letter, saying that it would just go away. According to company policy, a warning letter expires 9 months from its issuance. The letter has expired in the meantime and is, according to the Respondent, no longer of any significance. Nevertheless, the Charging Party contends that the episode shows that he was treated unfairly, because of his status as a core financial payer. In this regard, the record contains detailed, technical information as to whether the Union and the Company had a legitimate concern with Haas' performance involving his log entries, as well as his work habits.

Ordinarily, when the Union believed that a member was not abiding by the established work rules or standards set by the contract or regulations of the DOT, the Union can apply its internal disciplinary process. But here, the Union was not in a position to discipline Haas if it thought that he was out of line. As a core payer, he could not be brought up on internal union charges or be disciplined by the Union. Accordingly, filing a grievance, bringing violations to the attention of the Employer was a way to deal with such issues. From the perspective of the Union, Haas violated not only company policy but also DOT regulations. Lyons, shop steward, testified that another driver had approached him to question a run around claim that Haas was dispatched in violation of the Federal Motor Carriers Safety Regulations as to hours of service. Lyons stated that Haas' log of October 28, 2004, showed that he punched out at 3 and leaving the facility at 3:15. According to Lyons, Haas could have logged in at 2:45, because a driver is to report for work prior to his dispatch, but failing to log in until 3:15 violated the DOT regulations and the contract. Lyons also testified that Haas logged off duty at Deer Park, New York, from 7:30 until 8. Company policy, the regulations, and the contract, require that when a driver is in employment, his log should reflect the time as on duty time. Keith LaCroix, union business agent, agreed with Lyons' assessment, and also testified that waiting to be dispatched is regarded on duty time. And the procedure of dropping and hooking a trailer could be logged as driving time, but is definitely on duty and Haas should have logged on duty. The purpose of the hour of service regulations is to insure that fatigued drivers are not operating motor vehicles on the public highways. Both union witnesses felt sure that Haas had violated Roadway policy and Federal regulations. The Union filed a grievance on November 4, 2004, alleging that Roadway had dispatched Haas in excess of the negotiated running times (GC Exh. 12).

As the Company's relay manager, Kelly reviewed the drivers' logs daily to make sure that their hours matched up, by looking at the punch marks and the pay records, before entering the data into the computer. After reviewing Haas' logs of October 28, 2004, Kelly determined that they matched the punch

marks (GC Exhs. 2A, 17). But Kelly testified that he had problems with Haas' logs of October 28 and October 29, 2004. Initially, he questioned the log of October 28, 2004, because, in his opinion, the run as logged was impossible to do. The task, called "drop and hook" involving the attaching and detaching the trailer from the cab, was impossible to complete in only 15 minutes. Secondly, Haas was dispatched at 3 p.m., yet his log showed him to be off duty from 3 p.m. to 3:15 p.m. Kelly testified that Haas should have logged as on duty when he was dispatched at 3 p.m., because the preinspection task is considered on duty. Kelly had so informed Haas on November 4, 2004, during a meeting in Kelly's office, but Kelly testified that he did not discover this discrepancy at the time. Therefore, Kelly did not rely on that for purposes of the warning, even though pretrip inspections performed by Haas should by all accounts have been on duty. Finally, Haas was not supposed to put himself in an off-duty status while waiting at the terminal. Ordinarily, the motor carrier makes that determination, or the dispatcher. Kelly testified that he had raised that issue with Haas before, but that he had not followed Kelly's directions. According to Kelly, Haas was really pushing it this time, so that a warning was appropriate. In any case, the record shows that Kelly questioned Haas' log entries and informed him that the Union was not happy with the way Haas worked the system, in stretching the DOT regulations.

Running hard and reducing his on-duty driving time, allows a driver to get more work and additional runs. A driver is limited by regulations to 70-hours driving time during an 8-day limit. Drivers are paid on the basis of miles driven, so that an entry of off duty will not be considered towards the 11-hours driving limit and the 70-hour time limit. Other drivers feel that work is taken away from them when someone like Haas gets additional trips as a result of his practice of performing work while off duty.

The record shows in great detail the technical requirements in completing logs in conformity with DOT regulations and whether Haas violated the regulations, but it is clear that his logs should not have reflected his pretrip inspections on October 28 and 29, 2004 as off duty. In his testimony, Haas described it as a shady area.

The Union's grievance, filed on November 4, 2004, did not seek to penalize Haas but challenged the Company's action for dispatching Haas in excess of the negotiated running times. The aim of the grievance was to compensate the other drivers who lost the work. Haas was dispatched to drive from Carlisle, Pennsylvania to Deer Park, New York, and return and from Carlisle to Hagerstown, Maryland and back. The grievance also raised the issue of Haas' logs of October 28 and 29, 2004 for logging out at 3 p.m. after his start time (GC. Exh.12). The purpose of the grievance was to protect any available driver who could have been dispatched, if Haas had properly logged in at 3 rather than at 3:15 for his Deer Park run.

The second incident involving the Union's relationship with Haas was revealed by a letter of December 20, 2004, signed by Chris Boyer, Roadway's resource administrator, informing Haas of a 1-day suspension (GC Exh. 31). The letter stated: "You logged 2.5 hours off duty while waiting for a dispatch. This must be logged 'on duty, not driving.'" Union Steward Don Lyons initiated the Company's inquiry into Haas' logs, when he brought Haas' logs of December 15, 2004, to Kelly's attention (GC Exh. 32). Kelly conferred with Llewellyn Franklin, relay operations manager, and decided not to pursue the matter. They decided that the Union's complaint did not show any violation. However, subsequently, while Kelly was on vacation, Lyons approached Chris Boyer, driver superintendent, with the same complaint and persuaded him to issue the suspension letter. When Haas received the letter, he immediately called Franklin who said that he did not know about it, but that he would talk to Kelly. Three hours later, after having consulted with Kelly, Franklin called Haas and informed him that the letter of December 20, 2004, had been rescinded, torn up and not to worry about it. The Union justified its criticism of Haas' activity, suggesting that a driver is not permitted to take himself off duty for more than 2 hours.

The General Counsel argues that the warning letter and the suspension letter are illustrative of the Company's discriminatory treatment of Haas and the Union's discriminatory motive towards Hass, because he is a core financial payer or Beck objector. In support, the General Counsel cites incidents of the Union's past antipathy towards core payers, in particular Haas. The Respondents argue that the core payer status of Haas did not play any role in their treatment of him by demonstrating that other employees or union members were treated in the same manner.

Analysis

The leading case dealing with the allegations in the complaint is *Radio Officers v. NLRB (A. H. Bull Steamship Co.)*, 347 U.S. 17 (1954). There, the Court held that union inducement of an employer to discharge a union member or to discriminate against him or her for reasons other than failure to pay union dues or fees authorized by a union shop violated Section 8(b)(2). The purpose of the Act is to assure that employees are free to exercise their rights to join a union or to refrain from joining a union. Section (b)(2) prohibits a union "to cause or attempt to cause" an employer to discriminate in violation of Section 8(a)(3), and Section 8(a)(3) prohibits an employer's discrimination based on the exercise of employee rights, i.e., to encourage or discourage union membership. *Breininger v. Sheet Metal Workers Local 6*, 493 U.S. 67 (1989). Moreover, the encouragement or discouragement of union membership banned by the Act is that which is accomplished by discrimination. *Teamsters Local 357 v. NLRB (Los Angeles-Seattle Motor Express)*, 365 U.S. 667, 675 (1961). And, as argued by the General Counsel, an employer violates the Act when it accedes to an unlawful demand from the union to discriminate against an employee. *Fruin-Colnon Corp.*, 227 NLRB 59 (1976), enf. 571 F.2d 1017 (8th Cir. 1978).

Here the record shows that the Union had initiated the Company's perusal of Haas' logs. Upon its own review of the documents, the Company issued the warning letter and the 1-day suspension notification. The Union's shop steward, Don Lyons brought Haas' logs of October 28 and 29, 2004, to the attention of Gregg Kelly, Roadway's relay manager. Even though the warning was signed by Lou Franklin, it is clear that Kelly made the decision to issue the warning. Kelly's testimony

shows that he was suspicious of the times reflected on Haas' logs which, in his opinion, did not accurately reflect the time spent on the "drop and hook" procedure at Deer Park. Kelly doubted that the procedure could be done in 15 minutes. Kelly was also critical of Haas' practice of putting himself in an off-duty status. The record shows in great detail the extent to which any form of discipline was justified. In that regard, the Company and Union were convinced that Haas had stretched the regulations in order to increase his driving time. Upon its review of the logs and pay records, the Company decided to discipline Haas. The second incident, resulting in the suspension of Haas was promptly rescinded. Lyons had brought this issue to the Company's attention as well. That infraction was not well established and was not considered a DOT violation. Again, the Union had initiated the incident.

Although the General Counsel argued extensively that the warning and the suspension were totally unjustified or without any reasonable basis, the record shows that Haas circumvented Company rules and DOT regulations to obtain more driving assignments. The DOT regulations provide, in pertinent part, as follows (GC Exh. 30, p.147:

> On duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. On duty time shall include:
>
> > All time at a plant, terminal, facility, or other property of a motor carrier or shipper, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier.
> >
> > All time inspecting, servicing, or conditioning any commercial motor vehicle at any time.

These provisos clearly support the Respondents' arguments that (1) Haas was required to log on-duty time at 3 on October 28, 2004, (2) that it is the Company's responsibility to relieve a driver rather than the individual himself, and (3) that any time in preparation of the actual driving time, including preinspections and drop and hook work, is considered on-duty time. The Roadway road driver's manual similarly defines "on duty not driving" as time spent performing work other than driving, including pretrip inspection and dropping and hooking (E. Exh. 1). Moreover, other witnesses doubted that the drop and hook procedure could be performed in 15 minutes or even 18 minutes, as testified by Haas. For example, General Counsel's witness, Randall Eckenrode, a driver and core payer, testified that under the best of conditions the task would take a half an hour. These and other incidents convince me that Haas, a hard worker and skilled driver, was indeed running hard and use the times to his advantage. Haas testified, "I can't help that I work faster than other individuals" (Tr. 296). He was able to subtract these times from the 70-hour weekly time limit and the 11-hour daily driving limit to gain additional driving assignments.

Assuming that the Union went out of its way to bring Haas' logs to the Company's attention, was the Union motivated by Haas' core payer status? And did the Company accede to the Union' requests to discriminate? There is no direct evidence in the record to suggest that the Union or the Company retaliated against Haas, because he was a core payer. There were no threats directed against Haas because he was a core payer, nor any clear expressions made by union officials critical of Haas' status with the Union, nor any independent 8(a)(1) conduct that interfered with his rights as a core payer. Moreover, the Union was aware of at least four other financial core payers among Roadway's drivers, yet there is no evidence that the Union had failed to represent them fairly. Indeed, Haas had to concede that the Union represented him in spite of his membership status and obtained a favorable decision about an issue involving his sick leave. Haas also admitted knowing that the Union checks the logs of most of the drivers on a regular basis, and that other drivers have complained about his logs.

Significantly, the record shows that Roadway considered Haas one of its most productive employees, and there is no evidence in the record to suggest that Roadway's decisions to discipline Haas were related to his status with the Union. Instead, the Company believed that Haas was trying to manipulate the system, and violated DOT regulations and Company policy. In his testimony, Haas admitted that he did not believe that the Company was concerned about his union status. And Company witnesses, Kelly or Franklin, denied considering Haas' core payer status in their business dealings with him or being influenced by the Union. The record also shows that Roadway used its own judgment in deciding whether to issue a discipline. Roadway issued the warning after Haas failed to heed management's advice on previous occasions. The letter has since expired. And when during the middle of December, the Union called Haas' logs of December 15, 2004, to the Company's attention, because Haas had logged off duty 2.5 hours for waiting for a dispatch at a terminal, Franklin and Kelly made the decision not to issue a discipline. The subsequent decision by Chris Boyer, driver superintendent, to issue the suspension was promptly rescinded after Kelly, who was superior to Boyer in the Company's hierarchy, received a telephone call from Haas. Roadway rescinded the letter of suspension on the same day Haas received it. The Company acted on its own, without consultation with the Union in doing so.

The record also shows that Roadway has disciplined other drivers for similar reasons, when their logs violated DOT regulations (GC Exhs. 13–16, E. Exh. 2). Moreover, I have no reason to doubt the testimony of Roadway's supervisors, Kelly and Franklin. Their demeanor while testifying appeared honest and plausible. I find that there is no evidence in the record that the core payer status of Haas was a motivating factor in the Company's decision to discipline him. *Wright Line*, 251 NLRB 1083 (1980). The only evidence that the Company could be said to have acceded to a request from the Union to issue a discipline, was Boyer's letter of suspension which was promptly revoked by his supervisor.

With respect to the Union, the General Counsel points to certain circumstantial evidence or background evidence from which an inference of discriminatory conduct is to be drawn. In this regard, the General Counsel relies on an incident a year earlier, during the second or third week of December 2003, when Don Borden, shop steward, once referred to core payers

as "fucking scumbags" during a conversation with another driver. The remarks were overheard by Eckenrode, who confronted Borden, saying that he was also a core payer. Borden said that they don't contribute to the local Union and they don't support them. Haas entered the room at that point and Borden said, we better shut up, here he comes. Another incident cited by the General Counsel happened in April 2004 in Roadway's yard. Steve Hockenberry, shop steward for yard workers, approached Eckenrode as he was getting out of his truck and said, I heard that you became a core member. Eckenrode asked how he got that information. Hockenberry said that the stewards had a list of names of core payers. Hockenberry had assumed that such information was kept confidential.

Indications of the Union's animus against Haas as a core payer are found, according to the General Counsel, in a grievance filed by the Union on May 8, 2004. The grievance accused the Company of dispatching Haas in excess of negotiated running times on April 8, 2002 (GC Exh. 8). The Union filed a similar grievance on June 7, 2004, blaming the Company for permitting Haas to reset his log hours, a unique procedure permitting drivers to work in excess of the 70 available hours, which another driver could have used (GC Exh. 7). In May 2004, Haas was called into the office by Lou Franklin, relay operations manager, who informed Haas that the Union was filing a grievance about drivers resetting their hours. Resetting hours pursuant to DOT regulations permitted drivers to increase their running times in excess of the 70 hours in the 8-days limit. Haas, who was one of the few drivers who chose to reset, was told by Franklin that the Union considered him one of the main individuals who favored resetting his logs, and that his status with the Union may have been the reason. Haas later confronted David Wolf, a union steward, about the issue, Wolff only said, that he could do nothing about it. The General Counsel also points to the Union's failure to respond to Haas' written requests to be a core payer and his demands for an accounting. Finally, without any direct evidence, the General Counsel relies on a legal presumption that whenever a union interferes with an employee's employment status, by inference such conduct is presumed to be unlawful.

Haas never filed a grievance with the Union about his issues, although he could have, but he filed a charge with the Region on June 23, 2004, in which he referred to the Union's grievances of May 8 and June 7, 2004, stating that the Union constantly checks his logs, that it files grievances against the Company for the way it assigns work to him and that other drivers who (GC Exh. 28). Haas subsequently withdrew the charge (GC Exh. 29).

Although the General Counsel filed a comprehensive brief and a detailed analysis of the technical issues, I find that the evidence of unlawful motivation by the Union unpersuasive. On the one hand, the Union was unduly persistent in referring Haas' logs to management's attention, on the other, the issue of his core financial status appeared to be of little or no significance. Basically the background consisted of a derogatory remark made by a union steward a year earlier about core payers generally, grievances filed by the Union dealing with Haas' logs about a controversial practice of resetting and Haas' own impression that the Union was unduly and overly concerned about his logs. Of relevance to the tension between Haas and the Union may have come from Haas' unsuccessful campaign to run for union office and to topple the union leadership with accusations of fiscal mismanagement. In any case, union steward, Borden, testified that he did not know the identity, nor the number of core members in Teamsters Local 776, and he denied using a derogatory term to describe core payers. Lyons testified that he also did not know who the core payers were and professed not to know what a Beck objector is. I do not credit their testimony in this regard. Not only was it self serving, but while testifying about this, their demeanor was hesitant and appeared uncertain.

Relevant to the issue discrimination against Haas as a core financial payer, is whether the Union harassed other core payers, not only Haas. LaCroix identified a memorandum, dated November 2004, and signed by the president of the Union, Daniel Virtue (U. Exh. 8). The memorandum, addressed to members and agency fee payers, explained the rights of members to become financial core payers. LaCroix testified that Haas' status as a core payer did not play any role in the Union's treatment of Haas, and that the Union did not ask Roadway to discipline Haas because of his status with the Union. His testimony is consistent with the Union's practice of filing grievances against the Company, and not against any employees, including Haas.

The Union also points to numerous letters of discipline similar to those given to Haas, issued by Roadway to other drivers for violations of DOT regulations and company policy (U. Exh. 9). Indeed, the documents showed that current union members, Borden and LaCroix, were not immune from such warnings. And, it also showed that Lyons was warned on March 6, 2003, for failure to log drops and hooks under "on duty, not driving." Driver Metcalf was suspended for his failure to properly log drops and hooks. He also received warnings for other infractions. While most of the disciplinary letters referred to specific provisions in the regulations, several warnings were sufficiently specific to reveal that they involved issues similar to those involving Haas. The record also contains grievances filed by the Union against Roadway for violations of negotiated running times involving other drivers (U. Exh. 13). I find little evidence of disparate treatment by the Company or the Union against Haas.

Instead, the record shows that the Union was motivated by complaints from other drivers that Haas was running hard and taking work away from union members in the way he processed his logs. Running hard, according to Sharrell Coalson, a fellow driver meant that Haas was driving more miles than he should be running. He testified (Tr. 106):

> Mr. Lyons said that he had been hearing the [sic] Mr. Haas was running really hard and that they needed to kind of watch what he was running so maybe they could find something to slow him down.

Eckenrode, the other driver who testified for the General Counsel, who is also a core payer, similarly testified that other drivers complained about Haas for running outside the regulations. Eckenrode said that everybody knows who among the

drivers runs hard, and that it included Haas. Haas admitted that other drivers have complained about him.

Union Steward LaCroix testified that Roadway and the Union had adopted negotiated running times, namely set times for driving times between terminals and other destinations (GC Exh. 6). According to LaCroix, the Union has filed numerous grievances about drivers exceeding the negotiated running times. Lacroix issued a memorandum of March 15, 2004, that stewards were to monitor logs with Roadway's management as to the driving times of seven or eight drivers, who had problems with DOT regulations (GC Exh. 11). One of the concerns of policing the contract with Roadway is the maintenance of standards. Breaking down conditions occurs when a driver does not abide by the negotiated work rules or DOT regulations. According to Kelly, the Union has brought more of Haas' logs to his attention than those of other drivers, because "they felt he was stretching the DOT regulations" and it "feels that Haas takes work away from other drivers because he completes runs in less time than he is allotted for the runs . . . . this is the reason they scrutinize his logbooks; not because he is a Beck objector" (Tr. 214, GC Exh. 19).

In sum, considering that there is no evidence of discrimination by the Union or Roadway against other Beck objectors, that other drivers, like Haas, were disciplined by the Company for similar infractions, that Haas' infractions were shown, at least arguably, to conflict with DOT regulations and Company policy and resulted in an increase in his driving times, and that fellow employees were critical of his "running hard," I cannot find that the Company's actions or the Union's conduct towards Haas rose to the level of unlawful discrimination, or were motivated by his core financial payer status, as alleged in the complaint.

CONCLUSIONS OF LAW

The General Counsel has not shown by a preponderance of the evidence that the Respondent, Roadway Express, Inc., has violated Section 8(a)(1) and(3) of the Act or that the Respondent Union violated Section 8(b)(1)(A) and 8(b)(2) of the Act.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[1]

ORDER

The complaint is dismissed in its entirety.

Dated, Washington, D.C., March 9, 2006

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.